**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**CRIMINAL APPEAL No. 2344 of 2005**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE J.R.VORA**
**HONOURABLE MR.JUSTICE BANKIM.N.MEHTA**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**STATE OF GUJARAT - Appellant(s)**
**Versus**
**HABIBBHAI JIVABHAI SANDHI & 2 - Opponent(s)**

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**Appearance :**
MR IM PANDYA APP for Appellant(s) : 1,
None for Opponent(s) : 1 - 3.

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**CORAM : HONOURABLE MR.JUSTICE J.R.VORA**

**and**

**HONOURABLE MR.JUSTICE BANKIM.N.MEHTA**

**Date : 27/04/2007**

**ORAL JUDGMENT**

**(Per : HONOURABLE MR.JUSTICE BANKIM.N.MEHTA)**

1. The appellant – State has preferred this appeal under 378 of the Code of Criminal Procedure, 1973 and challenged the judgment and order of acquittal rendered on 2-9-2005 by the learned Addl. Sessions Judge, Fast Track Court No.12, Morbi, Dist. Rajkot in Sessions Case No.40 of 2004 acquitting the accused respondents for the offence punishable u/s 498-A, 306 and 114 of the I.P. Code.

2. In brief, the prosecution case was that one Kasambhai Ahmadbhai, the brother of deceased Jinnatben made an application to the Police Station Officer (P.S.O.), Morbi City Police Station, on 13-5-2003 alleging that his sister Jinnatben had married to accused Habibbhai Jivabhai Sandhi before about 26 years and were residing at Viramgam; that they had daughter Mumtaz who was married and was residing at her matrimonial house; that as they had no male child, accused Habibbhai used to pass taunting remarks on trifle matters and was beating Jinnatben and was also driving her out of the house frequently but with a view that her

marriage does not break he used to persuade her and leave her at the accused's house; that accused Alibhai Jivabhai Sanghi the brother of accused Habibbhai and accused Haluben wife of Alibhai were frequently visiting the deceased and used to pass taunting remarks against Jinnatben as she had no male child and they were insisting that accused Habibbhai should contract second marriage; that accused Alibhai Jivabhai Sanghi and accused Haluben used to instigate accused Habibbhai to beat deceased Jinnatben. It is further alleged that before about 12 months of the incident Habibbhai left Jinnatben after picking up quarrel saying that he would contract second marriage as he had no male child and thereafter he went to Morbi; that accused Habibbhai did not take any care of Jinnatben and she suffered unbearable shock. It is also alleged that before 15 to 20 days of the incident accused Habibbhai was called at Viramgam to persuade him to take Jinnatben with him and he agreed to take Jinnatben with him but he insisted that he would contract second marriage; that Jinnatben told him that she would commit suicide if Habibbhai inflicted cruelty to her but went with

accused Habibbhai; that thereafter before about 10 to 12 days of the incident Mumtaz, the daughter of the deceased went to inquire about the deceased, at that time also Jinnatben informed her that the accused were inflicting mental cruelty and accused Alibhai and Haluben were instigating accused Habibbhai to contract second marriage and Jinnatben was beaten by accused Habibbhai in her presence; that on 11-5-2003 in the morning at about 10-00 a telephone call was made by accused Habibbhai to him and he was informed that Jinnatben had sustained burn injuries and therefore in the evening at about 7-30 he reached Morbi and was informed that Jinnatben had died; that on the next day dead body of Jinnatben was given to him and thereafter on 12-5-2003 he went to Morbi Police station to file complaint but complaint was not taken by the police station, therefore on the next day written complaint was given to the police station.

3. It may be recorded that after the incident Jinnatben was taken to the hospital and the incident was reported to the police and the incident was recorded as Accident

Case No.88 of 2003 and thereafter 'Yadi' was written to the Executive Magistrate to record dying declaration of injured victim Jinnatben. Thereupon, the Executive Magistrate recorded the dying declaration of injured Jinnatben. Thereafter, Jinnatben succumbed to her injuries and therefore it was registered as Accidental Death No. 20 of 2003 u/s 174 of the Code of Criminal Procedure Code, 1973 and panchanama of scene of offence and inquest panchanama were drawn. The dead body was sent for postmortem. Thereafter on the basis of complaint given by Kasambhai on 13-5-2003 offence was registered as I – CR No.106 of 2003 on 21-5-2003 by Morbi City Police Station for the offence punishable u/s 498-A, 306 and 114 of the I.P. Code and investigation was started. During the investigation statement of witnesses were recorded and the accused were arrested.

4. On completion of investigation charge sheet was laid before the learned Addl. Chief Judicial Magistrate, Morbi for the offence punishable u/s 498-A, 306 and 114 of the I.P.Code. As the offence was exclusively triable by the Court of Sessions, the case was

committed to the Sessions Court, Morbi and it was registered as Sessions Case No. 46 of 2004. The learned Asst. Sessions Judge, framed charge Exh. 1 against the accused who pleaded not guilty to the charge and claimed to be tried. Therefore, the prosecution adduced evidence to prove the charge levelled against the accused. On completion of recording of the evidence, incriminating circumstances appearing against the accused in the evidence were explained to them. The accused in their further statement recorded u/s 313 of the Code of Criminal Procedure, 1973 denied having committed the offence.

5. After hearing the learned A.P.P. and the learned advocate for the accused the learned trial Judge concluded that the prosecution failed to prove the charge levelled against the accused and therefore acquitted the accused for the offences charged against them. Being aggrieved and dissatisfied with the impugned judgment and order, State has preferred this appeal.

6. We have heard the learned A.P.P. for the appellant – State at length and in great

detail. We have also perused the impugned judgment and order and record and proceedings of the case.

7. The prosecution examined P.W. 4 Pravin Maganbhai Sardava, Deputy Mamlatdar who recorded the dying declaration at Exh.11. The witness deposed that on receipt of police 'Yadi' Exh. 13 on 11-5-2003, turn to record dying declaration was of Dy. Mamlatdar Shri B.B. Patadiya but since he was on leave on that day, he went to record dying declaration. The witness further deposed that he went to the hospital and met the doctor and inquired about condition of the patient; that the doctor informed him that the patient was competent to give her dying declaration and therefore he went to the patient and after disclosing his identity started recording dying declaration. The witness further deposed that after recording dying declaration of the patient it was read over and explained to her and her left thumb impression was obtained on the dying declaration as her right thumb was burnt. The witness explained in his deposition that inadvertently it was recorded in the dying declaration that right thumb

impression was obtained. In the cross-examination, the witness deposed that when he went to record dying declaration the doctor informed him that the patient was mentally and physically fit to give dying declaration. The witness also deposed that the deceased did not allege cruelty and she was not under any threat or coercion when she gave her dying declaration.

8. The prosecution produced dying declaration at Exh.12. It indicates that the Mamlatdar recorded it between 1-30 and 1-45 p.m. on 11-5-2003. It also bears an endorsement of the doctor that the patient was 'conscious' between 13-35 and 13-55 p.m. on 11-5-2003. In view of this evidence, it becomes clear that at the time of recording of the dying declaration, deceased Jinnatben was conscious. The dying declaration indicates that the incident took place at 12-00 at night on 10-5-2003 when the deceased was boiling water on primus when she suddenly got enraged and poured kerosene over her body and burnt herself. The dying declaration also indicates that the declarant stated that she had knowingly burnt herself. This declaration

indicates that no one was responsible for burn injuries caused to Jinnatben and the deceased herself poured kerosene over her body and ignited match-stick. Therefore, this evidence does not connect the respondents with the offence.

9. The prosecution also examined P.W. 2 Mumtaz Habibbhai, who is daughter of deceased Jinnatben at Exh. 9. The witness turned hostile and did not support the prosecution case. The witness was confronted with the police statement. The witness was cross-examined by the learned A.P.P. but nothing has been elicited from her cross-examination. In the cross-examination by the defence the witness admitted that deceased Jinnatben was suffering from mental illness for which she was being treated by Dr. Patel since about 10 to 15 years of the incident. In view of this evidence, it appears that the respondents – accused were not responsible for the incident and that deceased Jinnatben was suffering from mental ailment.

10. According to the prosecution case, the accused used to pass taunting remarks against

the deceased and wanted to marry again as he had no male child. However, P.W. 2 Mumtaz the daughter of the deceased did not support the version given by the complainant. The witness was the daughter of deceased and was grown up, therefore, she would not have let off the real culprit. Therefore, it is difficult to believe the prosecution case that the accused used to pass taunting remarks and such willful and deliberate conduct of the accused led the deceased to commit suicide. Therefore, in our view, the prosecution case with regard to harassment and cruelty allegedly inflicted by the accused to the deceased cannot be believed.

11. The prosecution also examined complainant P.W. 1 Kasambhai Ahmadbhai Sanghi at Exh. 7. The witness deposed that the deceased informed him that she would commit suicide and she would burn herself if more cruelty is inflicted to her by the accused. In the cross-examination the witness deposed that after the incident when he reached at the hospital the accused were present in the hospital. The witness also admitted that complaint Exh. 8 was drafted by an advocate and that no one

knew about cruelty meted out to deceased Jinnatben. The witness also admitted that marriage life of deceased Jinnatben with accused Habibbhai was happy. On analysing the deposition of this witness, it appears that except the complainant no one knew about cruelty allegedly meted out to deceased Jinnatben. If deceased was treated with cruelty she would have informed her daughter Mumtaz who was also married, but Mumtaz has not supported the prosecution case. Moreover, the marriage period of the deceased was about 26 years. Looking to this long marriage period, it is difficult to believe that the accused were inflicting cruelty and accused Habibbhai wanted to contract second marriage as he had no male child. In view of this, it is difficult to believe that cruelty was meted out to the deceased and therefore she committed suicide. The prosecution produced application, on the basis of which the offence was registered, at Exh.8. It appears to have been given on 13-5-2003 and thereafter the offence was registered. There is no explanation for delay. Therefore, in our view, application Exh. 8 cannot be relied upon.

12. The prosecution also examined P.W. 3 Roshanben Kasambhai Juneja at Exh.10. The witness was the wife of the complainant. The witness was declared hostile and did not support the prosecution case. The witness was confronted with her police statement. However, the witness denied having stated before the police about cruelty meted out to the deceased. In the cross-examination by the defence, the witness admitted that the deceased did not ever inform her about cruelty allegedly meted out to her. The witness admitted that the deceased was suffering from mental illness and so she committed suicide.

13. The prosecution examined Investigating Officer P.W. 5 Kacharabhai Hamirbhai Sadiya at Exh. 18. The witness admitted that when he recorded the statement of the neighbours he was informed that deceased Jinnatben had died on account of mental illness and there was no quarrel in their family.

14. The prosecution did not examine the Doctor who performed postmortem but produced

postmortem report of the deceased at Exh.27. It indicates that the cause of death was shock due to extensive burns. In view of the fact that the deceased in her dying declaration stated that she committed suicide by pouring kerosene over her body and igniting match-stick, in our view, there is no reason to disbelieve cogent evidence of dying declaration. The evidence of dying declaration also indicates that the deceased was in fit state of mind to give true account of her injuries. The dying declaration indicates that the declarant had committed suicide. Therefore, in our view, the death of Jinnatben was suicidal and the respondents were not responsible for the incident.

15. In view of above, the learned trial Judge was justified in recording acquittal of the accused – respondents and therefore no interference is warranted in the impugned judgment. Hence, leave to appeal is refused and the appeal stands dismissed.

(J.R. Vora, J.)

(Bankim N. Mehta, J.)

/JVSatwara/